

**REMARKS**

Claims 1-18 are pending in this application. By this Amendment, the Abstract and claims 1, 3 and 4 are amended to correct typographical errors and/or form. No new matter is added.

In response to the May 7, 2009 Restriction Requirement, Applicants provisionally elect Group III, claims 4, 11, 14, 16 and 18, with traverse.

National stage applications filed under 35 U.S.C. §371 are subject to unity of invention practice as set forth in PCT Rule 13, and are not subject to U.S. restriction practice. *See* MPEP §1893.03(d). PCT Rule 13.1 provides that an "international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept." PCT Rule 13.2 states:

Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

The Restriction Requirement asserts that the common technical features present in all groups include: a battery can having a space defined while being opened, a cap, an electrode assembly and a flange of the cap that is welded at an outer surface of the cap by means of a micro-arc. Accordingly, all the claims share common subject matter and, therefore, *a priori* unity of invention exists between all the claims. Thus, for the present application, a lack of unity of invention may only be determined *a posteriori*, or in other words, after a search of the prior art has been conducted and it is established that all the elements of the independent claim are known. *See* ISPE 10.07 and 10.08.

The Restriction Requirement does not establish that each and every element of the subject matter that is common to independent claims 1, 3 and 4 is known in the prior art.

Watanabe does not disclose a can having a flange, as recited in independent claims 1, 3 and 4. The Restriction Requirement asserts that JP 58-157050 to Watanabe (hereinafter "Watanabe") discloses a sealed battery comprising a battery case, a battery cover and an electrode assembly inserted into the case. As acknowledged by the Restriction Requirement, Watanabe discloses a case whose the circumference is welded at an end surface of the battery cover. See, e.g., Watanabe, Abstract and Figure 1. The case 1 of Watanabe has no surfaces protruding from its circumference. See, e.g., Watanabe, Figure 1. Watanabe thus does not disclose a can having a flange at an end, as recited in independent claims 1, 3 and 4. Therefore, Applicants respectfully submit that lack of unity of invention has not been established, and thus a restriction requirement based on a lack of unity of invention is improper.

Reconsideration and withdrawal of the restriction requirement are respectfully requested.

Respectfully submitted,



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Attachment:  
Abstract

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